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REMARKS

Further consideration of this application is respectfully requested. Claims 19-21, 24, 26, 27, 34, 36, 37 and 38 are presented for further examination.

This Amendment is submitted in response to the Non-Final Rejection dated February 2, 2006. In that action, the Examiner rejected claims 19-21, 24, 26, 27, 34 and 36 under 35 U.S.C. § 102(b) as anticipated by "FairMarket" and under 35 U.S.C. § 103(a) as unpatentable over "FairMarket" in view of "Shkedy."

FairMarket discloses an online auction in which vendors, "normally OEMs, and distributors, anomalously list excessive inventory for sale." Buyers can bid on the listed inventory, and the highest bidder wins at the end of the daily auction. FairMarket "charges a nominal fee for sellers for the use of the service." FairMarket eliminates the middleman such as brokers in selling excess inventory. The FairMarket "online auctions eliminate the middleman, who normally has a stake in the product sold...." "Informed sellers may get better deals than from brokers because they buy in large quantities and do not pay fees to middlemen."

The FairMarket reference is similar to Odom et al. which was previously cited showing an auction system. Auction systems do not meet the limitations of claim 19 or claim 38 because the price, by definition, is not specified in the auction. In an auction system, sellers do not list the price of the item, as set in forth Applicant's claim 19. For example, claim 19 recites "automatically calculating a fixed sales price from said fixed price specified by said distributors in said computer system...automatically generating entries in said computer business system that include said fixed sales price..." FairMarket does not disclose a "fixed sales price." The FairMarket system is an auction system. Auctions, by definition, do not have a fixed sales price. The Examiner argued that FairMarket discloses a minimum price that is set by the seller/distributor and that this constitutes a "set price." In an auction, the minimum price is not a "set price." In an auction, potential buyers bid against one another until a price is reached. The minimum price is merely a floor at which bidding starts. It is not a set price. Again, by definition, an auction does not have set prices for items.

In that regard, Applicant's claims have been further amended to state "making said listings of said goods available to said purchasers on said blind supply computerized selling system through a network to allow said purchasers to purchase said goods at said

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fixed sales price over said networks without bidding in an auction." Both claims 19 and 38 specifically exclude auctions from the claimed subject matter. Again, FairMarket is an auction in which buyers can bid on the listed inventory, and the highest bidder wins at the end of the daily auction. The independent claims of this application specifically exclude auctions.

Further, as pointed out above, Applicant's claims recite "automatically calculating a fixed sales price from the price specified by said sellers" This terminology finds support in the originally filed claims. FairMarket does not disclose calculating any type of price. The price in FairMarket is set and is not dependent on the price at which the goods sell. FairMarket charges a service charge for selling the goods. This price is not calculated from any particular price, such as the price specified by the buyer as set forth in Applicant's claims, but is merely a service charge that is preset. There is no disclosure, or suggestion of calculating a service fee, especially one that is based upon the sales price.

Further, both claims 19 and 38 recite "automatically calculating a fixed sales price from said price specified by said sellers in said blind supply system." In the FairMarket system, prices are not specified by the seller/distributor. The seller/distributor simply places the goods for sale on the FairMarket system for bidding in an auction. As the Examiner points out, the seller/distributor may set a minimum price, but that price is subject to change in the auction and hence is not a "set price," as recited in Applicant's claims. To argue that a minimum price, that is subject to change in an auction, is a "set price" is without merit.

The Examiner is also argued that a "mark up" is inherent in the FairMarket system. Applicant has amended that terminology to recite "calculating a fixed sales price from said fixed price specified by said distributors in said computer system" in claim 19. Claim 38 has similar language. Since Applicant has amended both claims 19 and 38, it is moot to argue whether "mark up" is inherent in the FairMarket system. However, there is clearly no teaching or suggestion in FairMarket of calculating a fixed sales price from a fixed price specified by a distributor or seller. Again, FairMarket discloses a service charge which implies a fixed fee for selling the goods that is not dependent upon price. If the Examiner considers these limitations to be inherent in FairMarket, Applicant

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respectfully requests an Affidavit from the Examiner in accordance with 37 C.F.R. § 1.105(d)(2).

The Examiner has also taken "Official Notice" that it is old and well known to include part numbers when generating a listing that includes product information. Applicant hereby requests an Affidavit from the Examiner pursuant to 37 C.F.R. § 1.104(d)(2) to support the "Official Notice" asserted by the Examiner.

Claims 20, 21, 24 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over FairMarket in view of Shkedy. The Examiner stated that FairMarket does not disclose a method of paying the distributor after the purchaser has accepted the goods, as well as accepting a shipping tracking number, accepting EFT, product information, and purchaser accessing the system through a corporate procurement system.

Shkedy does not make up for the deficiencies of FairMarket, as set forth above. Hence, claims 20, 21, 24 and 34 are patentable for the same reasons as set forth above. In that regard, Shkedy discloses a reverse auction system similar to the PriceLine system of Odom et al. (6,058,379) previously cited by the Examiner during the prosecution of this application. Again, for the same reasons as the PriceLine reverse auction system did not apply, so does Shkedy not apply. Both claims 19 and 38 do not relate to an auction system or a reverse auction system. Hence, even if these references could be combined as suggested by the Examiner, they still do not show Applicant's claimed invention, as set forth in the amended claims.

For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Dated this 1st day of May 2006.

Respectfully submitted,

COCHRAN FRELUND & YOUNG LLC

By: 

William W. Cochran
Registration No. 26,652
2026 Caribou Drive, Suite 201
Fort Collins, CO 80525
Phone: (970) 492-1100
Fax: (970) 492-1101
Customer No.: 27479